

# Court of Appeals, State of Michigan

## ORDER

People of MI v Harold Eugene Elvine

Docket No. 268824

LC No. 01-004166

Michael J. Talbot  
Presiding Judge

E. Thomas Fitzgerald

Michael R. Smolenski  
Judges

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Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the Court orders that the circuit court order denying defendant's motion for relief from judgment is VACATED, and the matter is REMANDED for further proceedings. While MCL 769.12(1)(a) authorizes a court to impose a life sentence for a fourth habitual offender conviction where the underlying conviction has a maximum sentence of five years or more, habitual offender sentences are still subject to the statutory sentencing guidelines. When imposing a sentence in excess of the sentencing guidelines, a trial court is required to state a substantial and compelling reason for the departure. MCL 769.34(3). On remand, the trial court is to state a substantial and compelling reason for the departure, or in the alternative, resentence defendant within the guidelines range. *People v Hegwood*, 465 Mich 432; 636 NW2d 127 (2001).

In all other aspects, the delayed application for leave to appeal is DENIED for failure to meet the burden of establishing entitlement to relief under MCR 6.508(D). We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 28 2006

Date

*Sandra Schultz Mengel*  
Chief Clerk